

RETURN TO WORK PRIORITY PROGRAM PROCEDURES

REVISED July 10, 2001

I. PURPOSE

Consistent with Administrative Directive 94-02, On Returning Injured and Disabled Employees to Work, these procedures establish the Return to Work Priority Program (RTWPP) for State Employees disabled due to work related injuries or illness. (See Appendix A.)

II. SCOPE

All regular civil service Employees in the Executive Branch shall be eligible for participation in the State's Return to Work Priority Program. Additionally, non-regular Employees shall qualify with limitations based on the nature and expiration date of their appointments. Exempt Employees are not eligible for this program.

III. DEFINITIONS

ALTERNATE WORK: Work, involving a change of the Employee's position, to which a disabled Employee is assigned to when (s)he can no longer perform the usual and customary duties and responsibilities of his/her pre-injury work.

CLAIMS MANAGER: A staff person assigned to manage a worker's compensation claim filed by a State Employee.

ELIGIBILITY PERIOD: A period not to exceed six months. The eligibility period begins with the Departmental Meeting and runs concurrently with the initial 30 days to review options. It ends with a placement or the completion of one statewide job search within the six months period. (For non-regular Employees, the eligibility period shall not exceed the expiration date of their appointment.)

LEGAL REPRESENTATIVE: An attorney or union agent who has written authorization to represent an Employee regarding his/her workers' compensation claim.

LIGHT DUTY: Temporary work that is different from the Employee's usual and customary duties and responsibilities in any department of the Executive Branch. Work is planned/assigned to adhere to the physical and/or psychological restrictions set by the Employee's or Employer's physician. The Employee remains appointed to his/her current position throughout the entire light duty assignment.

MODIFIED WORK: Changes in non-essential or marginal usual and customary duties and/or responsibilities of the Employee's current work.

PHYSICIAN: A doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, an optometrist, or a podiatrist, as defined by Chapter 386, HRS.

REGULAR WORK: The usual and customary duties and responsibilities of the Employee prior to the workers' compensation injury.

WORK INJURY: A personal injury suffered under the conditions specified in section 386-3.

IV. RETURN TO WORK PRIORITY PROGRAM (RTWPP)

The Return to Work Priority Program (RTWPP) addresses Light Duty and Priority Placement.

Returning an injured Employee to work as soon as possible contributes greatly to the Employee's recovery. A committed effort by all departments to provide light duty assignments will assist Employees in their recovery so that Employees can return to regular work or be placed in alternate or modified work.

As an Employer, we are committed to retaining our Employees who have been disabled due to a work-related injury or illness. Priority Placement describes an alternate job placement process for those Employees who are unable to permanently return to their usual and customary work because of a work-related injury or illness.

V. PROCEDURES

A. ASSESSMENT

1. RETURN TO WORK ASSESSMENT

- a. The claims manager will make a continuous assessment of medical information received on a claim. Based on this assessment, a determination may be made that an Employee on Temporary Total Disability (TTD) could be able to return to some type of employment.
- b. When a physician clearly states that the Employee is able to return to regular work, no further assessment is necessary.
- c. Where the assessment indicates that the Employee could possibly return to either regular work or some other form of employment such as modified work, light duty or alternate work, an Estimated Functional Capacities (EFC) form is to be sent to the physician along with a copy of the current position description. (See Appendix B1 and B2.) This report will identify the Employee's current physical and/or psychological capabilities and limitations.
- d. The claims manager will review the EFC report and determine whether placement efforts should begin.
- e. Where the EFC report indicates the Employee:
 - (1) is able to return to regular work, no further assessment is necessary;

(2) is able to return to regular work, with modification, continuing assessment is necessary;

(3) is continuing to recover from the injury and is able to perform light duty, placement efforts for light duty will be initiated;

(4) will not be able to return to regular or modified work on a permanent basis but is currently able to perform alternate work, a Departmental Meeting must be called (See Section V.C.2.)

f. If a Job Profile is necessary to determine the physical and/or psychological demands of the position, the claims manager will coordinate it.

2. CONTINUING ASSESSMENT IN LIGHT DUTY

When the Employee is placed into light duty, the claims manager will continue to assess medical reports to determine whether:

- a. further duties can be added;
- b. the Employee can return to regular work;
- c. the Employee cannot return to regular work on a permanent basis but can perform alternate work. (See 1.e.(4) above.)

3. COMPLETION OF ASSESSMENT

The claims manager's responsibility for assessment under the Return to Work Priority Program is completed when:

- a. the Employee is successfully placed in alternate work; or,

- b. the Employee successfully returns to regular or modified work; or
- c. the Employee is found to be unable to return to any state employment.

B. LIGHT DUTY PROCEDURES

1. LIGHT DUTY ASSIGNMENTS

- a. The Departmental Personnel Office (DPO) shall consider temporary modification of the Employee's regular work responsibilities and duties to accommodate the Employee's light duty restrictions.
- b. If temporary modification of the Employee's regular work is not possible, the DPO shall consider assigning the Employee to light duty tasks within the department, at the Employee's normal work site or another geographical location that is reasonable for the Employee.
- c. If light duty assignments are not available within the department, the Employee may be referred to HRD, Workers Compensation Division, for assignment to light duty in other departments within his/her personnel system (i.e. APT, certificated) subject to funding restrictions.
- d. The Employee remains appointed to his/her current position throughout the entire light duty assignment.

2. PLACEMENT IN LIGHT DUTY ASSIGNMENTS

- a. An appropriate physician (Employee or Employer physician) must approve and provide the parameters for an Employee's light duty assignments. The DPO will provide the claims manager with a completed Light Duty Report for the physician's approval. (See Appendix C.)

b. Managers shall consider/utilize Employees referred for light duty assignments.

c. Employees shall accept offers of light duty assignments which have been approved by an appropriate physician.

d. If an Employee refuses an approved light duty assignment, the Employee shall be placed on unauthorized absence from work for the hours that the Employee is supposed to be on work status. Appropriate disciplinary action may also be taken.

3. LIGHT DUTY PAY

When an Employee is placed in a light duty assignment, the Employee's department shall pay the Employee's salary in accordance with statutory requirements. If the Employee cannot be paid from the normal funding source, then alternative funding must be obtained.

4. RELEASE FROM LIGHT DUTY

The Employee's participation in Light Duty ends when the Employee:

a. is released to regular duty by the appropriate physician;

b. is placed in modified or alternate work;

c. refuses placement in suitable light duty assignments; or

d. is no longer eligible to participate in the Return to Work Priority Program.

C. PRIORITY PLACEMENT PROCEDURES

1. CRITERIA FOR PARTICIPATION

The Employee has been released by an appropriate physician to return to alternate work and the physician has determined that the Employee is permanently unable to perform any/all of the essential functions of the Employee's regular pre-injury position.

2. DEPARTMENTAL MEETING

a. General

As soon as practicable after determining the Employee is unable to return to his/her pre-injury work, and after an appropriate assessment has been made, the DPO will prepare for and schedule a meeting with the Employee to formally review the Employee's status and to explain the Employee's rights, responsibilities, and options. Prior to meeting, a referral from the claims manager will be sent to the DPO and Employee or Employee's representative.

b. Notification

(1) The DPO will prepare and send a letter to the Employee, notifying him/her, of the meeting. A copy of the letter should also be sent to the Employee's legal representative. (A sample letter is shown as Appendix D.) At a minimum, the letter announcing the meeting will contain:

- (a) purpose;
- (b) date and time;
- (c) location, to include address and room or office number;
- (d) contact person and telephone number;
- (e) right to have representation - union, legal, or other

- at the meeting;

(f) documents or other information the Employee is required to bring to the meeting; and,

(g) name and telephone number of the person the Employee must call, five working days prior to the scheduled meeting, to confirm his/her attendance at the meeting.

(2) If the Employee does not respond to the first letter or fails to appear for the scheduled meeting, a second letter (certified mail) will be sent to the Employee. (A copy of the letter will also be sent to the Employee's legal representative.) The letter will indicate that the Employee failed to appear for the first meeting and a second meeting is being scheduled. The Employee will be notified that failure to appear at the second scheduled meeting can result in immediate termination of employment. Termination will be in accordance with Section V.D. of these procedures.

c. Employer Representatives

The DPO will insure that appropriate staff, such as recruitment, classification, workers' compensation, labor relations, etc., are present at the meeting. The staff should be sufficiently knowledgeable about the case to be able to provide guidance and respond to specific questions that the injured Employee may have. Additionally, the DPO will be required to assist in documenting the meeting and providing follow-up support until the case is satisfactorily closed. A copy of the documentation will be provided to the Employee and his/her legal representative.

d. Objectives

The DPO will open the meeting, briefly explain the purpose,

introduce the participants, distribute pertinent documents, and, generally, put everyone at ease. It is important to establish and maintain a cordial and caring atmosphere throughout the meeting to insure maximum results. The following topics are to be discussed:

(1) Employee's qualifications for alternate job placement;

(2) Available options:

(a) Resignation

Discussion on Employee's reemployment rights and required paperwork.

(b) Retirement

(1) Refer Employee to Employee's Retirement System; and,

(2) Notify Employee that a copy of the retirement application is to be submitted to the DPO within 30 days of the meeting.

(c) Priority Placement into alternate work

(1) Eligibility period for placement;

(2) Complete and thorough review of job search efforts, both departmental and statewide;

(3) Discussion on advantages and disadvantages of geographical restrictions for job search efforts;

(4) Placement in alternate work position;

(5) Termination;

(6) Vocational Rehabilitation Benefits;

(7) Reemployment rights; and,

(8) Possible consequences of refusal of placement.

(3) Employee begins a 30 day period with this meeting to review options, decide on a course of action, provide necessary paperwork, and notify the DPO of his/her

decision.

3. ELIGIBILITY PERIOD

Priority Placement begins with the Departmental Meeting, and runs concurrently with the initial 30 days to review options. It ends with a placement or the completion of one statewide job search within the six month period. For non-regular Employees, the eligibility period shall not exceed the expiration date of their appointment.

4. DEPARTMENTAL JOB SEARCH

- a. The DPO shall attempt to place the Employee in a suitable position. In considering vacancies, the DPO may modify, downgrade, or reallocate positions.
- b. Identified vacancies must be approved as suitable for the Employee by an appropriate physician.
- c. The Employee may be referred for transfer or demotion opportunities before internal vacancy announcement and First Consideration procedures are completed for filling the vacancy.
- d. The DPO shall continue to consider all suitable vacancies until the Employee's eligibility in Priority Placement ends.

5. STATEWIDE JOB SEARCH

- a. When the DPO has determined that no modified or alternate positions are available within the department, the DPO shall request assistance from the HRD/R&E in identifying suitable positions located in other departments. (See Appendix E.)
- b. The HRD/R&E shall conduct one statewide job search

review before the Employee's eligibility in Priority Placement ends.

c. Identified vacancies must be approved as suitable for the Employee by an appropriate physician.

d. HRD/R&E will send written notification to the DPO when the statewide job search is completed.

6. APPOINTMENT TO ANOTHER POSITION

a. Placement shall be made in accordance with Title 14, Administrative Rules.

b. Appointment must be made to the alternate position except for good cause as determined by the director of HRD.

c. If the Employee refuses the offer of an alternate position:

(1) the Employee shall be terminated from employment;

(2) the Employee's workers' compensation benefits may be affected.

d. An Employee who has been placed by the department in a position under Priority Placement shall be eligible for additional placement services when the Employee was deemed incapable of performing the duties of the new position due to the work related injury or illness, and the statewide search has not been completed.

D. TERMINATION FROM STATE SERVICE

1. CONDITIONS FOR TERMINATION

An Employee disabled by an industrial injury shall be terminated from State service if the Employee:

- a. refuses to attend or fails to attend the departmental meeting after being properly notified in accordance with section V.C.2. of these procedures;
- b. does not notify the DPO with his/her decision to participate in Priority Placement within the 30 calendar days to review options;
- c. refuses an offer of employment, refuses or fails to attend a scheduled job placement meeting, or fails to report to work for the position (s)he was appointed to under Priority Placement; or
- d. cannot be placed within the Executive Branch by the end of his/her eligibility period in Priority Placement.

2. NOTIFICATION

- a. The Employee shall be terminated in accordance with chapter 14, Administrative Rules.
- b. The Employee's department shall take the termination action and notify HRD/SWCD and R&E. (See Appendix F.)

E. VOCATIONAL REHABILITATION (VR) BENEFITS

An Employee with an industrial injury who resigns or is terminated because (s)he could not be placed may be eligible for vocational rehabilitation (VR) benefits in accordance with Chapter 386, HRS.

The VR counselor shall assist the Employee in locating employment outside of State government.

F. REEMPLOYMENT RIGHTS

1. ELIGIBLE EMPLOYEES

Reemployment rights shall be granted to Employees of the Executive Branch in the following manner:

- a. An Employee who is terminated because (s)he could not be placed in a position under Priority Placement shall be placed on the Select Priority A list in accordance with Section 386-142, HRS (See Appendix F), provided that a non-regular Employee who was serving other than an initial probationary appointment shall be eligible for temporary vacancies, the duration of which are equivalent, as far as practicable, to the temporary period of the Employee's previous appointment, less the term already served. The term already served shall include the period the Employee received Workers' Compensation benefits;
- b. A regular Employee who retires as a result of an industrial injury but who is capable of working, may request in writing to have his/her name placed on the Select Priority B list in accordance with Section 76-26, HRS; and
- c. A regular Employee who resigns from state service may request in writing that his/her name be placed on the reemployment list in accordance with Section 76-25, HRS.

2. INELIGIBLE EMPLOYEES

An Employee is not entitled to reemployment rights if the Employee was terminated for refusing a job offer, refusing or failing to attend a scheduled job placement meeting, or failing to report to work for the position in which the Employee was appointed to under Priority Placement.

An Employee is ineligible for any employment in state government when the Employee waives his/her right of reemployment in a compromise settlement agreement in accordance with Section 386-78, HRS.

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This revision supercedes any preceding RTWPP Procedures.